IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 663 of 1999

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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Versus

DENA BANK GENERAL MANAGER (GUJARAT)

Appearance:

1. Special Civil Application No. 663 of 1999

MR AK CLERK for Petitioner No. 1

MR KM PATEL for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 07/07/2004

ORAL JUDGEMENT

1.1 The petitioner herein, has challenged the order dated 30/09/95, placed at Annexure 'F' to the petition, whereby, the respondent had imposed a penalty of stoppage

of two annual increments without cumulative effect on the petitioner and had denied him promotion to the post of Middle Management Grade, Scale II and III.

2.1 The brief facts of the case are that the petitioner joined the services of the respondent Bank as a Clerk in 1972 and was promoted to the post of Junior Management Grade Scale I in the month of April, 1985. It is the case of the petitioner that on 14/07/94, a show cause notice was issued to him, alleging him of negligence in the performance of duties in respect of fraud committed by a subordinate employee, in the Branch in which he was working as the Branch Manager. It is also the case of the petitioner that on 24/11/94, a chargesheet came to be issued against the petitioner at Annexure 'A' to the petition, but, the petitioner could not file his reply as the documents asked for by him were not supplied by the Bank. The petitioner has contended that without waiting for the petitioner's reply, the respondent Bank initiated departmental inquiry against him on 30/03/95 by appointing an Inquiry Officer. The Inquiry Officer recorded his findings at Annexure 'D' to the petition.

2.2 The petitioner submitted his representation in respect of the findings of the Inquiry Officer at Annexure 'E' to the petition. After considering the representation of the petitioner, the respondent Bank imposed the aforesaid penalty. The petitioner preferred appeal before the Appellate Authority which was also rejected by order dated 09/06/98.

3.1 Mr.K M Patel learned advocate for the respondent Bank has contended that the petitioner has suppressed the fact that though he was allowed to participate in the departmental exams in the year 1995 and 1998. He has contended that there are specific documents which have been produced along with the affidavit-in-reply which show that the petitioner had in fact participated in the said exams for promotion, but was not considered, as he was found unsuitable for promotion.

3.2 Mr.Patel for the respondent has further submitted that after the petitioner was issued with the charge-sheet dated 24/11/94, the petitioner did not submit his reply, though he was required to submit it within ten days from the receipt of the same. Inquiry was, therefore, initiated against the petitioner. On the basis of the charges which were proved against the petitioner in the said inquiry, the petitioner was imposed with the aforesaid penalty. It is this penalty

which is under challenge before this Court through this petition.

4.1 The petitioner had preferred Civil Application No.6488/2002 with a prayer to direct the respondent Bank to bring the sealed cover of the petitioner's consideration for promotion in 1993 before this Court and to open the same before this Court. While disposing of the said Civil Application, the Court had come to the conclusion that there was no question of giving any direction to the respondent authority to open the sealed cover, as there was no sealed cover in existence, at the relevant point of time.

5.1 It is submitted by Mr.Patel that the petitioner had already accepted voluntary retirement on 28/02/01. Therefore, his prayer for promotion could not be considered since he had already retired. So, the limited prayer which is required to be considered is the order of penalty imposed by the Bank by order dated 30/09/95 and which was confirmed by the Appellate Authority by order dated 09/06/98.

6.1 The Appellate Authority vide order dated 09/06/98 has observed that during the tenure of 13 years service, the petitioner has been issued chargesheet twice, while he was working as Branch Manager, for the fraud committed by the staff members working under him. It further observed that the imposition of proportionate and deterrent penalty was warranted in the case, where on account of gross negligence and act of omission and commission on the part of the Branch Manager i.e. the petitioner, a fraud of Rs.67,000/- by a subordinate of the Branch Manager was facilitated. Therefore, it confirmed the penalty imposed by the Disciplinary Authority vide its order dated 30/09/95.

7.1 Looking to the averments and documents on record and the affidavit-in-reply filed by the respondent Bank, it is clear that the respondent Bank had given the petitioner sufficient opportunity to discharge his duties as a responsible Officer of the Bank. But, despite all the opportunities, the petitioner acted in an irresponsible manner. Therefore, the penalty imposed on the petitioner by the Disciplinary Authority was justified and was commensurate with the gravity of proved misconduct. Under these circumstances, no interference is called for by this Court under Article 226 of the Constitution of India. The petition is, therefore, required to be dismissed.

8.1 For the foregoing reasons, this petition is dismissed. Rule discharged.

(K. S. Jhaveri, J.)

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